

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MARYLAND

ROBERT F. GAULDEN :  
 :  
 v. : CIVIL NO. CCB-04-292  
 : Criminal No. CCB-00-008  
 UNITED STATES OF AMERICA :  
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**MEMORANDUM**

Petitioner Robert Gaulden was sentenced on December 13, 2002 following his conviction by a jury on charges of possession with intent to distribute marijuana (Count One) and failure to appear (Count Four). Judge David A. Faber, sitting by designation in the District of Maryland, sentenced Gaulden to 41 months incarceration on Count One and 10 months consecutive on Count Four. On April 20, 2004, the Fourth Circuit affirmed Gaulden's conviction. 2004 WL 839660 (4<sup>th</sup> Cir. 2004). Gaulden did not challenge his sentence on direct appeal.

On February 3, 2004, Gaulden filed a motion to vacate under § 2255 claiming that his sentence was affected by the government's erroneous representation that he would receive surgery to reverse a colostomy within a short period of time. Review of the sentencing transcript indicates no support for that assertion. Judge Faber was aware of and supported the government's efforts to expedite surgery, but also recognized that the timing of medical treatment ultimately would be determined by the Bureau of Prisons.<sup>1</sup>

Neither Gaulden's original petition nor his recently-filed supplemental petition relying on the Supreme Court's decision in U.S. v. Booker, 125 S.Ct. 738 (2005) suggest that Judge Faber failed to

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<sup>1</sup> Gaulden, in fact, received the desired surgical procedure in May 2004.

consider Gaulden's need for medical care, see 18 U.S.C. § 3553(a)(2)(D). Further, Gaulden's direct appeal was decided almost nine months before the Supreme Court's opinion in Booker. The principles announced in Booker do not apply retroactively to cases on collateral review. McReynolds v. U.S., 2005 WL 237642 (7<sup>th</sup> Cir. Feb. 2, 2005); Green v. U.S., 2005 WL 237204 (2<sup>nd</sup> Cir. Feb. 2, 2005); In re Anderson, 2005 WL 123923 (11<sup>th</sup> Cir. Jan. 21, 2005); cf. U.S. v. Sanders, 247 F.3d 139, 151 (4<sup>th</sup> Cir. 2001)(holding the rule announced in Apprendi does not apply retroactively on collateral review).

Accordingly, Gaulden's petition will be dismissed. A separate Order follows.

February 17, 2005

Date

/s/

Catherine C. Blake  
United States District Judge

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**ORDER**

For the reasons stated in the accompanying Memorandum, it is hereby **ORDERED** that:

1. petitioner's motion to vacate under § 2255 is **Denied**; and
2. the Clerk shall **Close** this case.

February 17, 2005

Date

/s/

Catherine C. Blake  
United States District Judge